

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|--|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Thomas Juliano | Team: Squad #13 | CCRB Case #: 201902826 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 03/27/2019 7:52 PM | Location of Incident: Rockaway Parkway and Seaview Avenue | Precinct: 69 | 18 Mo. SOL 9/27/2020 | EO SOL 5/14/2021 | |
| Date/Time CV Reported Tue, 04/02/2019 10:17 AM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 04/02/2019 10:17 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. POM Robert Gallagher | 14960 | 957611 | 069 PCT |
| 2. DTS Nicklas Yardan | 7751 | 946577 | 069 PCT |
| 3. POM Michael Hawk | 01338 | 960645 | 069 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|--|-----------------------------|
| A.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher stopped § 87(2)(b) | |
| B.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher stopped § 87(2)(b) | |
| C.DTS Nicklas Yardan | Abuse: Detective Nicklas Yardan stopped § 87(2)(b) | |
| D.DTS Nicklas Yardan | Abuse: Detective Nicklas Yardan stopped § 87(2)(b) | |
| E.POM Michael Hawk | Abuse: Police Officer Michael Hawk stopped § 87(2)(b) | |
| F.POM Michael Hawk | Abuse: Police Officer Michael Hawk stopped § 87(2)(b) | |
| G.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher frisked § 87(2)(b) | |
| H.POM Michael Hawk | Abuse: Police Officer Michael Hawk frisked § 87(2)(b) | |
| I.DTS Nicklas Yardan | Abuse: Detective Nicklas Yardan frisked § 87(2)(b) | |
| J.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| K.POM Michael Hawk | Abuse: Police Officer Michael Hawk interfered with § 87(2)(b)'s use of a recording device. | |
| L.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher failed to provide § 87(2)(b) with a business card. | |
| M.DTS Nicklas Yardan | Abuse: Detective Nicklas Yardan failed to provide § 87(2)(b) with a business card. | |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|---|-----------------------------|
| N.POM Michael Hawk | Abuse: Police Officer Michael Hawk failed to provide § 87(2)(b) with a business card. | |
| O.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher failed to provide § 87(2)(b) with a business card. | |
| P.DTS Nicklas Yardan | Abuse: Detective Nicklas Yardan failed to provide § 87(2)(b) with a business card. | |
| Q.POM Michael Hawk | Abuse: Police Officer Michael Hawk failed to provide § 87(2)(b) with a business card. | |
| R.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher refused to provide his name to § 87(2)(b) | |
| S.POM Robert Gallagher | Abuse: Police Officer Robert Gallagher refused to provide his shield number to § 87(2)(b) | |
| T.POM Michael Hawk | Abuse: Police Officer Michael Hawk refused to provide his name to § 87(2)(b) | |
| U.POM Michael Hawk | Abuse: Police Officer Michael Hawk refused to provide his shield number to § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b) § 87(2)(g) | | |
| § 87(4-b) § 87(2)(g) | | |
| § 87(4-b) § 87(2)(g) | | |
| § 87(4-b) § 87(2)(g) | | |
| § 87(4-b) § 87(2)(g) | | |

Case Summary

On April 2, 2019, § 87(2)(b) called the CCRB and filed this complaint on behalf of himself and his friend, § 87(2)(b).

On March 27, 2019, at approximately 7:52 p.m., § 87(2)(b) and § 87(2)(b) were sitting inside of § 87(2)(b)'s running vehicle which was parked in a parking lot located at Rockaway Parkway and Seaview Avenue in Brooklyn. PO Robert Gallagher, PO Michael Hawk, and Det. Nicklas Yardan of the 69th Precinct stopped § 87(2)(b) and § 87(2)(b) (**Allegations A, B, C, D, E, and F: Abuse of Authority – § 87(2)(g)**). PO Gallagher frisked § 87(2)(b) and Det. Yardan and PO Hawk frisked § 87(2)(b) (**Allegations G, H, and I: Abuse of Authority – § 87(2)(g)**). PO Gallagher searched § 87(2)(b)'s vehicle (**Allegation J: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) attempted to film the officers and PO Hawk removed § 87(2)(b)'s cellphone from his hand (**Allegation K: Abuse of Authority – § 87(2)(g)**). PO Gallagher, Det. Yardan, and PO Hawk did not provide RTKA cards to § 87(2)(b) (**Allegations L, M, and N: Abuse of Authority – § 87(2)(g)**). PO Gallagher did not provide a RTKA card to § 87(2)(b) (**Allegation O: Abuse of Authority – § 87(2)(g)**). Det. Yardan and PO Hawk failed to provide a RTKA card to § 87(2)(b) (**Allegations P and Q: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) asked PO Gallagher and PO Hawk for their names and shield numbers and neither officer provided the information (**Allegations R, S, T, and U: Abuse of Authority – § 87(2)(g)**). § 87(4-b) § 87(2)(g)

§ 87(2)(b) No arrests or summonses resulted from this incident.

§ 87(2)(b) provided a cellphone video of this incident (**Board Review 01**). A summary of the footage can be found in IA 18 (**Board Review 02**). Additionally, BWC footage from PO Gallagher (**Board Review 03**), PO Hawk (**Board Review 04**), and Det. Yardan (**Board Review 05**) was obtained and can be found in IAs # 62-64, and summaries of the footage can be found in IA 74 (**Board Review 06**).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Robert Gallagher stopped § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Robert Gallagher stopped § 87(2)(b)

Allegation C – Abuse of Authority: Detective Nicklas Yardan stopped § 87(2)(b)

Allegation D – Abuse of Authority: Detective Nicklas Yardan stopped § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Michael Hawk stopped § 87(2)(b)

Allegation F – Abuse of Authority: Police Officer Michael Hawk stopped § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Robert Gallagher frisked § 87(2)(b)

Allegation H – Abuse of Authority: Police Officer Michael Hawk frisked § 87(2)(b)

Allegation I – Abuse of Authority: Detective Nicklas Yardan frisked § 87(2)(b)

Allegation J – Abuse of Authority: Police Officer Robert Gallagher searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) testified that he and § 87(2)(b) were seated in § 87(2)(b)'s parked Cadillac SUV for approximately one and a half hours before the officers approached. The car was not running, and neither § 87(2)(b) nor § 87(2)(b) had marijuana on them or inside of the vehicle. PO Gallagher approached the vehicle, told § 87(2)(b) that he smelled marijuana, and ordered § 87(2)(b) and § 87(2)(b) out of the vehicle. PO Gallagher patted down § 87(2)(b)'s whole body. § 87(2)(b) saw over the vehicle that PO Hawk and Det. Yardan patted down § 87(2)(b) however, § 87(2)(b) could not see specifically where § 87(2)(b) was touched as he was on the passenger side of the vehicle. The officers then brought § 87(2)(b) and § 87(2)(b) to the back of the vehicle and PO Gallagher searched the vehicle (**Board Review 07**).

§ 87(2)(b) provided a brief phone statement in which he made no mention of being frisked, but he was otherwise uncooperative with the investigation (**Board Review 18; see IAs for contact attempts**).

PO Gallagher testified that he observed § 87(2)(b)'s vehicle idling for five minutes, which was the violation for which he stopped § 87(2)(b) and § 87(2)(b). PO Gallagher knew the car was idling because, due to the cold weather, he saw smoke emitting from the vehicle's exhaust. PO Gallagher did not recognize § 87(2)(b)'s vehicle.

PO Hawk and Det. Yardan were generally consistent in their testimonies that § 87(2)(b)'s vehicle, which was known to them as being involved in prior narcotics transactions, was parked in the parking lot of Seaview Plaza which was known to the officers as a drug-prone location which is a precinct condition that had been discussed during roll calls, and all three officers have been involved in narcotics arrests at the location. The officers approached the parked vehicle to see what the occupants were up to. They did not intend to stop § 87(2)(b) and § 87(2)(b) at this point.

PO Gallagher, PO Hawk, and Det. Yardan were consistent in their statements that upon approaching the vehicle, prior to speaking with the occupants, each officer smelled an odor of marijuana emitting from the vehicle. PO Gallagher ordered § 87(2)(b) out of the vehicle and frisked his entire body. PO Hawk testified that he frisked § 87(2)(b) and Det. Yardan recalled frisking someone, but he did not recall if he frisked § 87(2)(b) or § 87(2)(b). Each officer testified that both occupants' entire bodies were frisked for weapons even though they did not observe any discernible bulges that they were concerned about, and each officer testified that they routinely frisk occupants of vehicles in this manner every time an occupant is removed from a vehicle. PO Gallagher searched the entire vehicle, excluding the trunk, for marijuana and found approximately one gram of marijuana in the driver's door of the vehicle (**Board Review 08, 09, 10**).

PO Gallagher's BWC footage captures him finding a small ziplock bag of marijuana in the driver's door of the vehicle (beginning at the 01:00 timestamp of the video player, visible at the bottom of the screen) (**Board Review 03**). At 01:57, § 87(2)(b)'s keys are seen in the ignition of the vehicle, and the vehicle engine is visibly turned on (**Board Review 11**).

The approach of a parked but running vehicle must be justified by an objective, credible reason, not necessarily indicative of criminality. The intrusion must be predicated on more than a hunch, whim, caprice, or idle curiosity. People v. Grady, 272 A.D.2d 952 (2000) (**Board Review 17**). No person shall cause or permit the engine of a motor vehicle to idle for longer than three minutes. New York City Administrative Code, Title 24, Section 24-163 (**Board Review 12**). The smell of marijuana is sufficient to provide officers with probable cause to search a vehicle and its occupants. People v. Chestnut, 43 A.D.2d 260 (1974) (**Board Review 13**).

§ 87(2)(g)

§ 87(2)(g)

Allegation K – Abuse of Authority: Police Officer Michael Hawk interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) testified that he took out his cellphone and began recording the officers, at which point PO Hawk shined his flashlight into the camera to block his face. PO Hawk then grabbed § 87(2)(b)'s cellphone and put it into PO Hawk's own pocket. PO Hawk returned § 87(2)(b)'s cellphone when the officers left the location (**Board Review 07**).

§ 87(2)(b)'s cellphone video begins with § 87(2)(b) speaking directly to the camera, complaining about the officers harassing him. At the 00:10 mark on the video player, visible at the bottom of the screen, the cellphone video turns white and overexposed while PO Hawk shines his flashlight at the camera. § 87(2)(b) moves his cellphone and PO Hawk follows the cellphone with his flashlight. § 87(2)(b) tells PO Hawk, "Don't try to block to block the uhh... from your face bro" while moving the camera. PO Hawk grabs the phone and the video ends (**Board Review 01**).

PO Hawk's BWC footage captures § 87(2)(b) filming PO Hawk as PO Hawk shines his flashlight into the phone [beginning at the 00:09 timestamp of the video player, visible at the bottom of the screen]. The flash of § 87(2)(b)'s phone is turned on. § 87(2)(b)

moves his cellphone first up in the air, and then closer to PO Hawk, and PO Hawk's flashlight follows § 87(2)(b)'s cellphone as it moves. At 00:15, PO Hawk extends his arm and attempts to grab § 87(2)(b)'s cellphone, but he is unsuccessful as § 87(2)(b) recoils. PO Hawk moves closer to § 87(2)(b) and takes the cellphone from his hand (**Board Review 04**). Det. Yardan's BWC footage captures the same moment (beginning at the 00:05 timestamp of the video player, visible at the bottom of the screen). PO Hawk moves closer to § 87(2)(b)'s cellphone is approximately an arms-length away from PO Hawk when PO Hawk outstretches his whole arm to reach for the phone (**Board Review 05**).

PO Hawk's and Det. Yardan's testimonies were generally consistent with each other. Once § 87(2)(b) began recording, PO Hawk shined his flashlight at § 87(2)(b)'s cellphone in order to illuminate it because he did not know if § 87(2)(b)'s cellphone "contained a gun or a knife." Neither PO Hawk nor Det. Yardan saw anything specific about § 87(2)(b)'s cellphone that concerned them, but they had a general concern that it may have contained a weapon. After PO Hawk pointed his flashlight at § 87(2)(b)'s camera, § 87(2)(b) began moving his cellphone around and put it inches from PO Hawk's face. PO Hawk said he took § 87(2)(b)'s cellphone away from him because of how close § 87(2)(b) was putting it to his face, which made him concerned for his safety. Additionally, PO Hawk said § 87(2)(b) had the flash of his phone on, which disrupted PO Hawk's vision. PO Hawk put § 87(2)(b)'s phone in his pocket. After PO Hawk reviewed BWC footage during his CCRB interview, he acknowledged that § 87(2)(b) was not utilizing the flash on his cellphone and that § 87(2)(b)'s cellphone was further away from him than a few inches, but he maintained that it still posed a safety issue due to the phone potentially being or containing a weapon (**Board Review 09**).

PO Gallagher did not recall § 87(2)(b) putting his cellphone in PO Hawk's face and he did not remember PO Hawk taking § 87(2)(b)'s cellphone from § 87(2)(b) (**Board Review 08**).

Individuals have a right to lawfully observe and record police activity in public places. This right can be limited for reasons such as safety of officers or other members of the public, or when a violation of law is committed by the individual who is observing and recording. NYPD Patrol Guide, Procedure 203-29 (**Board Review 14**).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation L – Abuse of Authority: Police Officer Robert Gallagher failed to provide § 87(2)(b) with a business card.

Allegation M – Abuse of Authority: Detective Nicklas Yardan failed to provide § 87(2)(b) with a business card.

Allegation N – Abuse of Authority: Police Officer Michael Hawk failed to provide § 87(2)(b) with a business card.

Allegation O – Abuse of Authority: Police Officer Robert Gallagher failed to provide § 87(2)(b) with a business card.

Allegation P – Abuse of Authority: Detective Nicklas Yardan failed to provide § 87(2)(b) with a business card.

Allegation Q – Abuse of Authority: Police Officer Michael Hawk failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) alleged that PO Gallagher, PO Hawk, and Det. Yardan failed to offer to provide him or § 87(2)(b) with business cards. § 87(2)(b) did not request the officers' business cards (**Board Review 07**).

§ 87(2)(b) provided a brief phone statement, in which he made no mention of these allegations, but he was otherwise uncooperative with the investigation (**Board Review 18; see IAs for contact attempts**).

PO Gallagher testified that after he entered the police car and deactivated his BWC, he realized that because he searched § 87(2)(b)'s car, he needed to provide a business card to § 87(2)(b). PO Gallagher exited his vehicle and asked § 87(2)(b) if he wanted a business card. § 87(2)(b) replied, "Fuck you." PO Gallagher understood this to mean that § 87(2)(b) was refusing the business card. PO Gallagher did not offer a business card to § 87(2)(b) as his understanding of the Right to Know Act was that he was only required to offer a business card to the driver, § 87(2)(b) and not the passenger, § 87(2)(b) unless the passenger requested a business card, which he denied § 87(2)(b) did. He did not recall if PO Hawk or Det. Yardan provided business cards to § 87(2)(b) (**Board Review 08**).

Det. Yardan testified that he went back to the police car, got his business cards, and offered one to § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that he was going to write down the information instead of accepting the card. Det. Yardan did not recall if § 87(2)(b) wrote down his information. Det. Yardan did not recall if § 87(2)(b) took the business card or if he refused it. Det. Yardan stated that PO Gallagher and PO Hawk also offered business cards to § 87(2)(b) and § 87(2)(b) though he did not recall if they accepted the cards (**Board Review 10**).

PO Hawk testified that before leaving the scene, he offered § 87(2)(b) and § 87(2)(b) business cards; however, § 87(2)(b) and § 87(2)(b) entered the car without accepting the cards. He did not recall if Det. Yardan and PO Gallagher offered cards to § 87(2)(b) and § 87(2)(b) (**Board Review 09**).

PO Hawks', PO Gallagher's, and Det. Yardan's BWC footage captures the officers entering the police car (for example, see PO Gallagher's BWC footage, beginning at the 3:05 time stamp of the video player visible at the bottom of the screen). § 87(2)(b) is screaming profanity at the officers. At no point does the video show any officer offering their business card to § 87(2)(b) or § 87(2)(b) nor either civilian asking for one. However, the video ends prior to the point in time where the officers say they exited their vehicle and reapproached the civilians to offer them their business cards (**Board Review 03, 04, 05, 06**).

NYC Administrative Code, Section 14-174 states that officers are required to provide members of the public with business cards after law enforcement encounters, including stops, frisks, and vehicle searches, in which no summons is issued or arrest is made (**Board Review 22**).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation R – Abuse of Authority: Police Officer Robert Gallagher refused to provide his name to § 87(2)(b)

Allegation S – Abuse of Authority: Police Officer Robert Gallagher refused to provide his shield number to § 87(2)(b)

Allegation T – Abuse of Authority: Police Officer Michael Hawk refused to provide his name to § 87(2)(b)

Allegation U – Abuse of Authority: Police Officer Michael Hawk refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) and Det. Yardan were consistent in their statements that while PO Gallagher was searching § 87(2)(b)'s vehicle, § 87(2)(b) asked Det. Yardan for his name and shield number, and Det. Yardan verbally provided the requested information to § 87(2)(b). However, § 87(2)(b) alleged that as PO Gallagher, PO Hawk, and Det. Yardan were leaving and walking to their car, he called out to them, "I need your guys' names and badge numbers," and the officers did not respond before leaving the location.

§ 87(2)(b) provided a brief phone statement, in which he made no mention of these allegations, but he was otherwise uncooperative with the investigation (**Board Review 18; see IAs for contact attempts**).

Det. Yardan testified that § 87(2)(b) requested PO Gallagher's and PO Hawk's names and shield numbers, and that each officer verbally provided their own information. PO Hawk denied

that § 87(2)(b) requested any officers' name or shield number. PO Gallagher testified that § 87(2)(b) did not request his name and shield number, and that he did not recall if § 87(2)(b) requested the names and shield numbers of the other officers. PO Gallagher did not recall PO Hawk or Det. Yardan providing their names and shield numbers (**Board Review 08, 09, 10**).

PO Gallagher's, Det. Yardan's and PO Hawk's BWC footage does not show § 87(2)(b) requesting the officers' names or shield numbers. However, the video ends prior to the point in time where the officers say they exited their vehicle and reapproached the civilians to offer them their business cards (**Board Review 03, 04, 05, 06**).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b) [REDACTED]
 - [REDACTED]
- PO Gallagher has been a member-of-service for four years and has been a subject in seven additional CCRB complaints and 17 allegations, one of which was substantiated. § 87(2)(g) [REDACTED]
 - 201807315 involved a substantiated allegation of Discourtesy - Word. The board recommended command level instructions and the NYPD has not yet imposed discipline.
- Det. Yardan has been a member-of-service for 11 years and has been a subject in 14 additional CCRB complaints, and 38 allegations, none of which have been substantiated. § 87(2)(g) [REDACTED]
- PO Hawk has been a member-of-service for three years and has been a subject in 13 additional CCRB complaints, and 13 allegations, none of which have been substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Investigator: _____
 Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____
 Signature _____ Print Title & Name _____ Date _____